

REMARKS

This is a full and timely After Final Response to the Final Official Action of July 26, 2006. Entry of these remarks is respectfully solicited in that each rejection is obviated for its erroneous reliance on a patent commonly assigned to the assignee of this application, copending therewith and thus not available under 35 U.S.C. 103 (c) as will be explained.

Priority

It is noted that, in response to the remarks in the prior response, the claim for priority was acknowledged and presumably all certified copies were acknowledged as well. A copy of the original foreign-language patent was filed with this application.

Prematureness

Applicant, seeking review of the prematureness of the final rejections stated in the Final Office Action, respectfully requests reconsideration of the finality of the Office action for the reasons set forth hereinbelow. See MPEP §706.07 (c).

Claims

Claim 1 was rejected under 35 USC 103(a) as being unpatentable over Suzuki (U.S. 6611262 B1) in view of Basch et al. (U.S. 7012982 B1).

Claims 1 to 52 were rejected under 35 USC 103(a) as being unpatentable over Tracton et al. (U.S. 6470378 B1) in view of Suzuki (U.S. 6611262 B10 further in view of Basch et al (U.S. 7012982 B1)

Claims 1 to 52 were pending in this application while claims 53 to 77 were canceled. Of the pending claims, claims 1, 14, 27 and 40 were amended in a prior response and are here not further amended. All rejections are allegedly based on 35 U.S.C. §103(a), but in fact are founded on 35 U.S.C. 103 through 35 U.S.C. 102(e). These rejections are not believed to be apt for the reasons that follow.

Specifically, this application was filed on August 17, 2001 based on a priority application filed in Japan on August 21, 2000. It is assigned to Sony Corporation. The relied upon patent to Suzuki, No. 6,611,262 issued on August 26, 2003 (after this application was filed) based on an application actually filed in the U.S. on September 11, 1998. No publication of Suzuki is stated or of record. Thus, Suzuki, assigned on its face to Sony Corporation, was copending with this application and assigned to the same assignee as this application. Accordingly, all rejections relying on Suzuki '262 under section 103 cannot stand. Thus, the present application was filed after November 29, 1999, and the present application and Suzuki were, at the time the invention of the present application was made, commonly owned by Sony Corporation of Tokyo, Japan. According to 35 U.S.C. §103(c) and MPEP §706.02(1) (1), Suzuki is disqualified as prior art for the purpose of a rejection under 35 USC §103.

Moreover, each of Suzuki, Tracton and Basch issued after the filing of this application, and are thus not available as references under 35 U.S.C. 102(a) or 35 U.S.C. 103(a); rather, each is only available under 35 U.S.C. 102(e) thus generating for Suzuki the exception under section 103(c).

To the extent that prior remarks may still be applicable to any current rejection, those responsive arguments are hereby incorporated by reference. Because the Applicant's position

under law is that Suzuki is precluded as a reference available to be applied to any claim of this application, a detailed response to each rejection need not be provided.

Conclusion

Claims 1 through 52 are allowable and reconsideration of these claims is requested.

Claims 53-77 are cancelled without prejudice or disclaimer.

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Respectfully submitted,

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